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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,568	09/03/2003	Hidefumi Yoshida	2803.68246	5834

7590 08/16/2006

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EXAMINER
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SCHECHTER, ANDREW M

ART UNIT	PAPER NUMBER
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2871

DATE MAILED: 08/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/654,568

Applicant(s)

YOSHIDA ET AL.

Examiner

Andrew Schechter

Art Unit

2871

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 02 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 58.  
Claim(s) objected to: 70.  
Claim(s) rejected: 16, 17, 29, 65, 66, 68, 69 and 71.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see comments above.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 8/2/06  
13. ☐ Other: \_\_\_\_\_.

Continuation of 3. NOTE:

As a preliminary matter, the examiner encloses an initialled copy of the Information Disclosure Statement of 2 August 2006; the reference at issue, U.S. Patent No. 6,028,653 to Nishida, had previously been considered by the examiner.

Regarding the objection to claims 16 and 29, the examiner understood the language "along a surface" to mean what it said, that the electrodes were along a surface as shown in Fig. 32 of the application rather than in an alternative embodiment shown in Fig. 33 of the application. This was understood to be an amendment which limited the scope of the claim in order to overcome certain prior art. The applicant [see p. 2] now seeks to change the meaning of the claim to "along the surface direction" [see p. 2] without actually amending the claim language. This action by the applicant raises new issues regarding the scope of the claims [under 35 USC 112] and also the rejections under prior art, since the applicant evidently expects the claim scope to be broader in certain respects than the examiner understood.

Using this broader interpretation of the claim language, the applicant argues [see p. 3] that the rejections of claims 29 and 71 under 35 USC 112, first paragraph, are unnecessary because the claimed invention is shown in the figures. Under the broader interpretation the applicant apparently wishes to use, the figures do appear to give support to these claims.

The applicant's response regarding claim 71 and the rejection under 35 USC 112, 2<sup>nd</sup> paragraph would overcome that rejection, in that the response clearly states that the claim requires the electrode to directly contact the liquid crystal, without any intervening layer such as an alignment layer. However, given that this was not the interpretation assumed by the examiner, the claim needs to be further considered under 35 USC 112 and further compared to the prior art.

The applicant's argument [p. 5] regarding the prior art rejection over Nishida and Hirakata is not persuasive. The examiner refers the applicant to the detailed statement of the rejection in the previous office action. Furthermore, if the interpretation sought by the applicant were adopted, it appears initially to the examiner that the claims could be rejected under Nishida in view of Oh alone, without Hirakata, since Hirakata was only relied upon to evidence the feature which the applicant now seeks to disavow.



Andrew Schechter  
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Technology Center 2800  
11 August 2006